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NORTH COUNTY DIVISION
2013 DEC 26 PM 2:37

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

5 Attorneys for Defendants ANTHONY S. BIANCHI, M.D. and BIANCHI OB/GYN ASSOCIATES,
AMC

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 IN THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

10
11 TRACY LYSTRA

12 Plaintiff,

13 vs.

14
15 ANTHONY S. BIANCHI, M.D.; BIANCHI
16 OB/GYN ASSOCIATES, AMC, a California
corporation; and DOES 1 through 10,

17 Defendants.

CASE NO. 37-2013-00051204-CU-MM-
NC

IMAGED

ASSIGNED FOR ALL PURPOSES TO
JUDGE ROBERT P. DAHLQUIST
DEPARTMENT N-29

Complaint Filed: None Set
Trial Date:

ANSWER TO FIRST AMENDED
COMPLAINT BY DEFENDANTS
ANTHONY S. BIANCHI, M.D. AND
BIANCHI OB/GYN ASSOCIATES, AMC

IMAGED FILE

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22
23 COMES NOW defendants ANTHONY S. BIANCHI, M.D. and BIANCHI OB/GYN
24 ASSOCIATES, AMC, in answering plaintiff's first amended complaint on file herein, for
25 themselves alone, and for no other defendant, admits, denies and alleges as follows:

26 1. Under the provisions of Section 431.30 of the California Code of Civil Procedure,
27 these answering defendants deny both generally and specifically each and every allegation in
28 said first amended complaint, and the whole thereof, including each and every purported cause

1 of action contained therein, and denies that plaintiff has been damaged in the sum or sums
2 alleged, or in any other sum or sums, or at all.

3 2. Further answering plaintiff's first amended complaint on file herein, and the whole
4 thereof, including each and every purported cause of action contained therein, these answering
5 defendants deny that plaintiff sustained any injury, damage or loss, if any, by reason of any act
6 or omission on the part of these answering defendants, or any agent, servant, or employee of
7 these answering defendants.

8 AS AND FOR A FIRST, SEPARATE, DISTINCT AND AFFIRMATIVE
9 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

10 3. That any injury, loss or damage purportedly sustained, if at all, by plaintiff, was
11 directly and proximately caused by the negligence of the plaintiff, and any damages awarded to
12 plaintiff shall be reduced in proportion to the amount of negligence attributable to the plaintiff.

13 AS AND FOR A SECOND, SEPARATE, DISTINCT AND AFFIRMATIVE
14 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

15 4. That the liability of the persons ultimately determined to be responsible for
16 plaintiff's injuries and losses, if any, including the plaintiff, shall be compared, and the damages,
17 if any, awarded to plaintiff, shall be apportioned accordingly.

18 AS AND FOR A THIRD, SEPARATE, DISTINCT AND AFFIRMATIVE
19 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

20 5. That all care, treatment and procedures rendered to and performed upon plaintiff
21 was with the express and implied consent of said plaintiff.

22 AS AND FOR A FOURTH, SEPARATE, DISTINCT AND AFFIRMATIVE
23 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

24 6. That any injury, loss or damage purportedly sustained, if at all, by plaintiff, was
25 directly and proximately caused and contributed to by risks which were fully and actually known
26 to plaintiff, who fully and actually appreciated the nature and scope of the hazards created
27 thereby, and said plaintiff voluntarily assumed said risks and the potential consequences thereof.

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1 AS AND FOR A FIFTH, SEPARATE, DISTINCT AND AFFIRMATIVE
2 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

3 7. That plaintiff's first amended complaint, and each purported cause of action
4 contained therein, is barred by the provisions of Section 340.5 of the California Code of Civil
5 Procedure.

6 AS AND FOR A SIXTH, SEPARATE, DISTINCT AND AFFIRMATIVE
7 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

8 8. The incident described in plaintiff's first amended complaint, as well as the
9 injuries, losses and damages allegedly sustained by plaintiff, were proximately caused by
10 intervening and superseding causes and forces which were beyond the control of these answering
11 defendants and which, in the exercise of reasonable prudence, were not and could not be
12 anticipated or foreseen by said answering defendants.

13 AS AND FOR A SEVENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
14 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

15 9. That plaintiff's first amended complaint, and each purported cause of action
16 contained therein, fails to state facts sufficient to constitute a cause of action for Negligence,
17 Intentional Infliction of Emotional Distress, and/or Violation of Civil Code § 51.9 against these
18 answering defendants.

19 AS AND FOR AN EIGHTH, SEPARATE, DISTINCT AND AFFIRMATIVE
20 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

21 10. That plaintiff is not entitled to recover general damages in any amount in excess
22 of \$250,000, pursuant to Section 3333.2 of the California Civil Code.

23 AS AND FOR A NINTH, SEPARATE, DISTINCT AND AFFIRMATIVE
24 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

25 11. That these answering defendants may elect to limit and diminish plaintiff's alleged
26 damages pursuant to Section 3333.1 of the California Civil Code.

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1 AS AND FOR A TENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
2 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

3 12. Any recovery by the plaintiff pursuant to the first amended complaint, and each
4 purported cause of action contained therein, is controlled by the provisions of Section 667.7 of
5 the California Code of Civil Procedure.

6 AS AND FOR AN ELEVENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
7 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

8 13. That these answering defendants are informed and believes, and based upon such
9 information and belief, alleges that at the time and place of the accident alleged in plaintiff's first
10 amended complaint, plaintiff was in the scope of her employment; that at said time and place,
11 said employer had in force and effect a policy of Worker's Compensation Insurance; that plaintiff
12 has received benefits under the terms of said policy; that any injuries sustained by plaintiff were
13 proximately caused by the negligence of said employer; that any recovery in this case should be
14 reduced by the total amount of all payments made pursuant to plaintiff's claim for Worker's
15 Compensation; and that the doctrine as set forth in the case of Witt v. Jackson, (1961) 57 C.2d
16 57, applies herein.

17 AS AND FOR A TWELFTH, SEPARATE, DISTINCT AND AFFIRMATIVE
18 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

19 14. That plaintiff's action is barred in that plaintiff's exclusive remedy against these
20 answering defendants is in Worker's Compensation pursuant to the California Labor Code (Lab.
21 Code § 3601).

22 AS AND FOR A THIRTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
23 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

24 15. That if plaintiff, in fact, sustained or will sustain any injuries or damages as a result
25 of any act or omission on the part of these answering defendants (which supposition is not
26 admitted by these answering defendants but is merely stated for the purpose of this affirmative
27 defense), then plaintiff at the time and place alleged in said first amended complaint was herself
28 guilty of negligence in failing to exercise that degree of care for her own safety and protection

1 that ordinarily prudent persons would exercise under the circumstances, and said negligence
2 contributed as a legal cause in some degree to the injuries and damages being claimed by
3 plaintiff herein, thereby barring and/or reducing plaintiff's recovery.

AS AND FOR A FOURTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

6 16. That it contends that there is no basis for liability of said defendant to plaintiff.
7 However, without withdrawing that position, it alleges in the alternative that should these
8 answering defendants be found liable to plaintiff on the first amended complaint herein, these
9 answering defendants should, in whole or in part, be indemnified by the other defendants, by
10 those responsible persons, and/or entities who would be liable to plaintiff if joined herein,
11 according to the degree of involvement or responsibility for causing loss to plaintiff; and by
12 plaintiff to the degree and extent of plaintiff's own contributory negligence or to the extent
13 plaintiff is found to assume the position of any other responsible person and/or entity with whom
14 plaintiff has settled her claims separately or in any other manner have attempted to exonerate.

15 AS AND FOR A FIFTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
16 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

17 17. That plaintiff's first amended complaint, and each purported cause of action
18 contained therein, is barred for failure to comply with the requirements of Section 364 of the
19 California Code of Civil Procedure.

20 AS AND FOR A SIXTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
21 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

22 18. Plaintiff's prayer of punitive damages is inappropriate under Code of Civil
23 Procedure section 425.13.

24 AS AND FOR A SEVENTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
25 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

26 19. That at all times herein mentioned, plaintiff knew, or should have known, that
27 plaintiff was submitting herself to medical techniques, treatment and medication which, because
28 of the condition of plaintiff, rendered him susceptible to potential complications, injury, or

1 damage and that by submitting herself to such medical techniques, treatment and medication,
2 plaintiff freely, voluntarily and expressly assumed all risks attendant thereto, thereby barring
3 and/or reducing plaintiff's recovery herein.

4 AS AND FOR AN EIGHTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
5 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

6 20. That plaintiff's first amended complaint, and each purported cause of action
7 contained therein, was the result and/or cause of a natural cause or condition, or was the natural
8 or expected result of reasonable treatment rendered for the disease or condition and thus these
9 causes of action are barred pursuant to the provisions of Section 1714.8 of the California Civil
10 Code.

11 AS AND FOR A NINETEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
12 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

13 21. That it is entitled to an offset and/or reduction and plaintiff is barred from
14 recovering any and all amounts paid for plaintiff's alleged injuries by way of settlement or
15 judgment of any claim, incident or lawsuit which may have contributed to the injuries referred
16 to in the first amended complaint, in the event these answering defendants should be found liable
17 to plaintiff, although this supposition is denied and only stated for the purposes of this
18 affirmative defense.

19 AS AND FOR A TWENTIETH, SEPARATE, DISTINCT AND AFFIRMATIVE
20 DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

21 22. That plaintiff has failed to join all necessary parties pursuant to Code of Civil
22 Procedure section 389.

23 AS AND FOR A TWENTY-FIRST, SEPARATE, DISTINCT AND
24 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

25 23. That plaintiff lacks the capacity to sue pursuant to Code of Civil Procedure section
26 430.10.

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1 AS AND FOR A TWENTY-SECOND, SEPARATE, DISTINCT AND
2 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

3 24. That plaintiff's first amended complaint, and each purported cause of action
4 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
5 claim is barred by Section 2395 of the California Business and Professions Code.

6 AS AND FOR A TWENTY-THIRD, SEPARATE, DISTINCT AND
7 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

8 25. That plaintiff's first amended complaint, and each purported cause of action
9 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
10 claim is barred by Section 2396 of the California Business and Professions Code.

11 AS AND FOR A TWENTY-FOURTH, SEPARATE, DISTINCT AND
12 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

13 26. That plaintiff's first amended complaint, and each purported cause of action
14 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
15 claim is barred by Section 2397 of the California Business and Professions Code.

16 AS AND FOR A TWENTY-FIFTH, SEPARATE, DISTINCT AND
17 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

18 27. That plaintiff's damages are barred or limited by Proposition 51, as set forth in
19 Section 1430 et. seq. of the California Civil Code.

20 AS AND FOR A TWENTY-SIXTH, SEPARATE, DISTINCT AND
21 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

22 28. That plaintiff's first amended complaint, and each purported cause of action
23 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
24 claim is barred by the doctrine of estoppel.

25 AS AND FOR A TWENTY-SEVENTH, SEPARATE, DISTINCT AND
26 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

27 29. That plaintiff's first amended complaint, and each purported cause of action
28 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's

1 claim is barred by the doctrine of waiver.

2 AS AND FOR A TWENTY-EIGHTH, SEPARATE, DISTINCT AND
3 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

4 30. That plaintiff's first amended complaint, and each purported cause of action
5 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
6 claim is barred by the doctrine of laches.

7 AS AND FOR A TWENTY-NINTH, SEPARATE, DISTINCT AND
8 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

9 31. That plaintiff's first amended complaint, and each purported cause of action
10 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
11 claim is barred by the doctrine of unclean hands.

12 AS AND FOR A THIRTIETH, SEPARATE, DISTINCT AND
13 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

14 32. That plaintiff's first amended complaint, and each purported cause of action
15 contained therein, fails to state facts sufficient to constitute a cause of action in that plaintiff's
16 claim is barred by Section 856.4 of the California Government Code.

17 AS AND FOR A THIRTY-FIRST, SEPARATE, DISTINCT AND
18 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

19 33. That the instant dispute arises from a matter covered by a binding arbitration
20 agreement between the parties, and that these answering defendants desire that this matter be
21 therefore submitted to binding arbitration in accordance with the terms of the Arbitration
22 Agreement. (Please see Physician-Patient Arbitration Agreement, attached as Exhibit "A")

23 AS AND FOR A THIRTY-SECOND, SEPARATE, DISTINCT AND
24 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

25 34. Defendant claims that a reasonable person in plaintiff's position would have
26 consented to the treatment provided; and even if a reasonable person in plaintiff's position would
27 not have consented to such treatment, plaintiff still would have consented to the treatment at
28 issue.

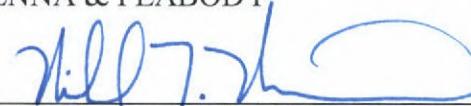
1 AS AND FOR A THIRTY-THIRD, SEPARATE, DISTINCT AND
2 AFFIRMATIVE DEFENSE, THESE ANSWERING DEFENDANTS ALLEGE:

3 35. Recovery by plaintiff is barred in whole or in part by her failure to exercise
4 reasonable care and diligence to mitigate any damages to her.

5 WHEREFORE, these answering defendants pray that plaintiff take nothing by way of her
6 first amended complaint on file herein, that these answering defendants may be dismissed with
7 their costs of suit incurred herein, and for such other and further relief as the court may deem just
8 and proper.

9 DATED: December 24, 2013

CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY

10 By: 

11 RICHARD D. CARROLL
12 MICHAEL T. MERTENS
13 Attorneys for Defendants
14 ANTHONY S. BIANCHI, M.D. and
15 BIANCHI OB/GYN ASSOCIATES, AMC

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EXHIBIT A

PHYSICIAN-PATIENT ARBITRATION AGREEMENT

Article 1: Agreement to Arbitrate: It is understood that any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered, will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional rights to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.

Article 2: All Claims Must be Arbitrated: It is the intention of the parties that this agreement bind all parties whose claims may arise out of or relate to treatment or service provided by the physician including any spouse or heirs of the patient and any children, whether born or unborn, at the time of the occurrence giving rise to any claim. In the case of any pregnant mother, the term "patient" herein shall mean both the mother and the mother's expected child or children.

All claims for monetary damages exceeding the jurisdictional limit of the small claims court against the physician, and the physician's partners, associates, association, corporation or partnership, and the employees, agents and estates of any of them, must be arbitrated including, without limitation, claims for loss of consortium, wrongful death, emotional distress or punitive damages. Filing of any action in any court by the physician to collect any fee from the patient shall not waive the right to compel arbitration of any malpractice claim. However, following the assertion of any claim against the physician, any fee dispute, whether or not the subject of any existing court action, shall also be resolved by arbitration.

Article 3: Procedures and Applicable Law: A demand for arbitration must be communicated in writing to all parties. Each party shall select an arbitrator (party arbitrator) within thirty days and a third arbitrator (neutral arbitrator) shall be selected by the arbitrators appointed by the parties within thirty days of a demand for a neutral arbitrator by either party. Each party to the arbitration shall pay such party's pro rata share of the expenses and fees of the neutral arbitrator, together with other expenses of the arbitration incurred or approved by the neutral arbitrator, not including counsel fees or witness fees, or other expenses incurred by a party for such party's own benefit. The parties agree that the arbitrators have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under this contract. This immunity shall supplement, not supplant, any other applicable statutory or common law.

Either party shall have the absolute right to arbitrate separately the issues of liability and damages upon written request to the neutral arbitrator.

The parties consent to the intervention and joinder in this arbitration of any person or entity which would otherwise be a proper additional party in a court action, and upon such intervention and joinder any existing court action against such additional person or entity shall be stayed pending arbitration.

The parties agree that provisions of California law applicable to health care providers shall apply to disputes within this arbitration agreement, including, but not limited to, Code of Civil Procedure Sections 340.5 and 667.7 and Civil Code Sections 3333.1 and 3333.2. Any party may bring before the arbitrators a motion for summary judgment or summary adjudication in accordance with the Code of Civil Procedure. Discovery shall be conducted pursuant to Code of Civil Procedure section 1283.05; however, depositions may be taken without prior approval of the neutral arbitrator.

Article 4: General Provisions: All claims based upon the same incident, transaction or related circumstances shall be arbitrated in one proceeding. A claim shall be waived and forever barred if (1) on the date notice thereof is received, the claim, if asserted in a civil action, would be barred by the applicable California statute of limitations, or (2) the claimant fails to pursue the arbitration claim in accordance with the procedures prescribed herein with reasonable diligence. With respect to any matter not herein expressly provided for, the arbitrators shall be governed by the California Code of Civil Procedure provisions relating to arbitration.

Article 5: Revocation: This agreement may be revoked by written notice delivered to the physician within 30 days of signature. It is the intent of this agreement to apply to all medical services rendered any time for any condition.

Article 6: Retroactive Effect: If patient intends this agreement to cover services rendered before the date it is signed (including, but not limited to, emergency treatment) patient should initial below:

Effective as of the date of first medical services

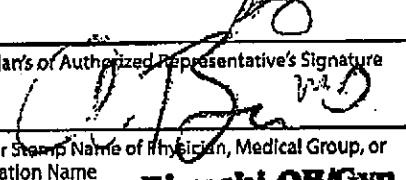
T2
Patient's or Patient Representative's Initials

If any provision of this arbitration agreement is held invalid or unenforceable, the remaining provisions shall remain in full force and shall not be affected by the invalidity of any other provision.

I understand that I have the right to receive a copy of this arbitration agreement. By my signature below, I acknowledge that I have received a copy.

NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT.

By:


Physician's or Authorized Representative's Signature

11/27/12

By:

(Date) 11/27/12

By:

Print or Stamp Name of Physician, Medical Group, or Association Name

Blanchi OB/Gyn Associates
113 S. Vine St., Ste. A
Fallbrook, CA 92028


Patient's or Patient Representative's Signature

4/12/12
(Date)

Print Patient's Name

(If Representative, Print Name and Relationship to Patient)

A signed copy of this document is to be given to the physician and retained in patient's medical records.

(2-08) *and all affiliated entities*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 225 Broadway, Suite 1575, San Diego, CA 92101. On December 26, 2013, I served a true and correct copy of the following document:

**ANSWER TO FIRST AMENDED COMPLAINT BY DEFENDANTS ANTHONY S. BIANCHI,
M.D. AND BIANCHI OB/GYN ASSOCIATES, AMC**

(X) **By United States Mail (CCP §§1013a, et seq.):** I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, with postage fully prepaid.

() **By Overnight Delivery/Express Mail (CCP §§1013(c)(d), et seq.):** I enclosed said document(s) in a sealed envelope or package provided by an overnight delivery carrier to each addressee. I placed the envelope or package, delivery fees paid for, for collection and overnight delivery at an office or at a regularly utilized drop box maintained by the express service carrier at 225 Broadway, San Diego, California.

() **By Fax Transmission (CRC 2.306):** Based on a written agreement of the parties to accept service by fax transmission, I faxed said document(s) to each addressee's fax number. The facsimile machine that I utilized, (619) 814-5999, complied with California *Rules of Court*, Rule 2.306, and no error was reported by the machine. Pursuant to Rule 2.306(h), I caused the machine to print a record of the transmission, a copy of which is attached to the original of this proof of service.

() **By Messenger Service:** I enclosed said document(s) in a sealed envelope or package to each addressee. I provided them to a professional messenger service (E.S.Q. Services, Inc.) for service. An original proof of service by messenger will be filed pursuant to California *Rules of Court*, Rule 3.1300(c).

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct.

Executed on December 26, 2013, at San Diego, California.

ALMA FELIX

1
2 PROOF OF SERVICE
3 RE: LYSTRA v. BIANCHI
4

5 CURTIS M. KING, SBN 187778
6 JASON D. DUMBECK, SBN 174950
7 DUMBEK & DUMBECK
8 3355 MISSION AVE., SUITE 139
9 OCEANSIDE, CA 92058
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11 ATTORNEYS FOR PLAINTIFF
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